

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER: 07-0358P**  
**Sales Tax-Penalty**  
**For the Period October 2006**

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

**I. Tax Administration—Penalty**

**Authority:** IC § 6-8.1-6-3; IC § 6-8.1-10-2.1; 45 IAC 15-11-2.

Taxpayer protests the imposition of the ten percent negligence penalty.

**STATEMENT OF FACTS**

Taxpayer made a payment of its monthly sales tax collected. According to Taxpayer, it placed the check in the mail on the due date for the payment; however, the postmark was the next day—the day after the due date. As a result, Taxpayer was assessed a ten percent penalty for late payment of taxes.

The Department sent a letter to Taxpayer stating that Taxpayer could request a hearing by replying to the letter within twenty (20) days of the letter. Taxpayer did not reply to the Department's letter. Due to Taxpayer's failure to reply, this Letter of Findings is written based on the information in Taxpayer's protest file and other Department records relating to Taxpayer.

**I. Tax Administration—Penalty**

**DISCUSSION**

Taxpayer protests the imposition of the ten percent negligence penalty on Taxpayer's failure to timely remit sales tax.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1. The Indiana Administrative Code, 45 IAC 15-11-2 further provides:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the

Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

IC § 6-8.1-6-3 states (*emphasis added*):

(a) A document, including a form, a return, a payment, or a writing of any type, which must be filed with the department by a prescribed date, is considered filed:

(1) *in cases where it is mailed through the United States mail, on the date displayed on the post office cancellation mark stamped on the document's wrapper;*

(2) in cases where it is delivered to the department in any manner other than through the United States mail, on the date on which the department physically receives the document; or

(3) in cases where a payment is made by an electronic fund transfer, on the date the taxpayer's bank account is charged.

(b) If a document is sent through the United States mail by registered mail, certified mail, or certificate of mailing, then the date of the registration, certification, or certificate, as evidenced by any record authenticated by the United States Post Office, is considered the postmark date.

(c) If a document is mailed to the department through the United States mail and is physically received after the appropriate due date without a legible correct postmark, the person who mailed the document will be considered to have filed the document on or before the due date if the person can show by reasonable evidence to the department that the document was deposited in the United States mail on or before the due date.

(d) If a document is mailed to, but not received by, the department, the person who mailed the document will be considered to have filed the document on or before the due date if the person can show by reasonable evidence to the department that the document was deposited in the United States mail on or before the due date and if the person files

with the department a duplicate document within thirty (30) days after the date the department sends notice that the document was not received.

Simply stated, Taxpayer has multiple means of making tax payments, and is in control of when and how it makes those tax payments. Out of the many permutations available to ensure that its payment was timely, Taxpayer chose to wait until the due date of its tax payment and assume that the United States Postal Service would postmark its envelope on the day that it submitted into the mail. When Taxpayer chose this method of payment, Taxpayer assumed the risk and responsibility under Indiana tax law that the cancellation date of its envelope would be the due date.

Furthermore, Department records indicate that Taxpayer had submitted late payments nine previous times, which further indicates a lack of ordinary business care by Taxpayer. In summary, Taxpayer has not provided any legal or factual grounds to permit penalty waiver.

### **FINDING**

Taxpayer's protest is denied.